`IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5388 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KHODIDAS MANGALDAS PATEL - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR MAHENDRA K PATEL for Petitioner(s) : 1,MR PINAKIN B RAVAL for Petitioner(s) : 1,
MS.PAURAMI SHETH, ASST. GOVERNMENT PLEADER for Respondent(s) : 1,
DS AFF.NOT FILED (R) for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 03/07/2006

ORAL JUDGMENT

The petitioner is before this Court being aggrieved by order dated 9th August 2004 passed by the

learned Additional District Magistrate, Mehsana-respondent no.2. He was pleased to reject the application of the petitioner dated 6th March 2003 on the ground that the land on which the godown is constructed, was granted NA Permission by the Collector, Mehsana by order No.LND. NAP/SR/ 109/ 99 dated 19th January 2002.

Respondent no.2 referred to condition no.12, contained in said order of the Collector. Condition no.12 therein, provided that inflammable and explosive material shall be used in putting up construction on the land.

This condition was read to mean that the godown constructed on the land should not be used for storage of crackers. Condition no.12 to ensure that inflammable and explosive articles are not used in construction which may render the building prone to fire accident.

2. The learned Assistant Government Pleader (AGP) in order to explain the action of the authority submitted that respondent no.2 had asked for a copy of order dated 19th January 2002. The copy received by him was not legible. In absence of a legible copy, as the petitioner was pressing for early disposal of the application, respondent no.2 relying upon the copy available inadvertently interpreted condition no.12 imposing a ban even on storing of crackers in the godown.

3. The learned AGP submitted that the order passed by respondent no.2 is upheld in appeal. However, after the aforesaid discussion the learned AGP submitted on instructions from respondent no.2 that in the event the matter is remanded with a direction for fresh consideration taking into consideration condition no.12 in its right reference to context a fresh order will be passed.

4. In view of the discussion hereinabove and in view of the fact that condition no.12 cannot be read, as is read by respondent no.2 and the appellate authority, the orders dated 9th August 2004 and 25th October 2004 are quashed and set aside. The matter is remanded to respondent no.2 for deciding the matter afresh and pass a reasoned order within six weeks from the date of receipt of this judgement. The authority shall communicate its decision by Registered Post A.D. to the petitioner. Rule is made absolute. No order as to costs.

(RAVI R. TRIPATHI, J.)

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